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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,052	06/19/2002	Brian D. Kraffen	3041-021	9125
27383	7990	01/26/2004	EXAMINER	
CLIFFORD CHANCE US LLP				
200 PARK AVENUE				
NEW YORK, NY 10166				
			ART UNIT	PAPER NUMBER
			1742	
DATE MAILED: 01/26/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 10/070,052	Applicant(s) KRAFTON ET AL.
Examiner Donald R. Valentine	Art Unit 1742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
 Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-36 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 35 and 36 is/are allowed.
- 6) ☒ Claim(s) 25-34 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 22827152.
 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
 5) ☐ Notice of Informal Patent Application (PTO-152)
 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 25-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Talley in view of Kross et al.

Talley shows a mist, which has antimicrobial agents, e.g. chlorine dioxide, apparently contained in an air circulating system. (See col. 1, lines 49-67; col. 2, lines 1-55; col. 3, lines 10-29; col. 4, lines 10-52 and lines 60-

65). The reference treats fruits and vegetables. Figure 1 shows "agricultural equipment", i.e., storage shed.

Applicants own definition of "inert gas" is recited by claim one as "air" which appears to be present in the reference. The reference recites compositions within range of those claimed by applicant's claim 26.

The reference does not recite the term "disinfecting mist".

Kross et al define a chlorine dioxide composition, which is utilized as a disinfectant for substrates, e.g., fruits and vegetables (col. 3, line 25-35). Kross et al further labels chlorine dioxide as a disinfectant that may have further antimicrobiocidal action (see col. 4, lines 10-22; col. 7, lines 15-36).

It would be considered within the skill of the art to determine the effectiveness of a chlorine dioxide composition in the form of a mist because Kross suggest that the effectiveness of chlorine dioxide as either a disinfectant or antimicrobial agent would be dependent upon its physical state.

The references do not recite disinfecting clay or porous surfaces; (claims 31, 33) however, the skilled artisan would expect the disinfections to occur on these substances as well as fruit and/or vegetables.

Allowable Subject Matter

4. Claims 35-36 are allowed.
5. The following is a statement of reasons for the indication of allowable subject matter: The references of record do not show or suggest a method of feeding buffered aqueous alkali metal solution to an anolyte compartment of an electrolytic generator, feeding water to the generator catholyte compartment, supplying motive inert gas to an eductor to create a vacuum in the anolyte compartment and recovering a mist from the catholyte compartment.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Barber et al show formation of a mist in which a vacuum eductor is utilized.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald R. Valentine whose telephone number is 571-272-1250. The examiner can normally be reached on Monday-Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on 571-272-1244. The fax

Art Unit: 1742

phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1222.



Donald R. Valentine
Primary Examiner
Art Unit 1742

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January 16, 2004